

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SB 1094

INTRODUCER: Senator Crist

SUBJECT: Career Offenders/Registration

DATE: March 30, 2009

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Cannon	CJ	Pre-meeting
2. _____	_____	JU	_____
3. _____	_____	JA	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

I. Summary:

Section 775.261, F.S., the Florida Career Offender Registration Act, requires a “career offender,” a defined term, to register as such and meet other requirements of the section. Career offender registration bears some similarity to registration of sexual predators and sexual offenders.

The bill makes it a third degree felony for any person who has reason to believe that a career offender is not complying, or has not complied, with the requirements of s. 775.261, F.S., and who, with the intent to assist the career offender in eluding a law enforcement agency that is seeking to find the career offender to question the career offender about, or to arrest the career offender for, his or her noncompliance with the requirements of the section:

- Withholds information from, or does not notify, the law enforcement agency about the career offender’s noncompliance with the requirements of the section, and, if known, the whereabouts of the sexual offender;
- Harbors, or attempts to harbor, or assists another person in concealing or attempting to harbor, the career offender;
- Conceals or attempts to conceal, or assists another person in concealing or attempting to conceal, the career offender; or
- Provides information to the law enforcement agency regarding the career offender that the person knows to be false information.

This bill substantially amends s. 775.261, F.S., and reenacts s. 944.608, F.S., for the purpose of incorporating the amendment to s. 775.261, F.S., in a reference to that section.

II. Present Situation:

Section 775.261, F.S., the Florida Career Offender Registration Act, requires offenders who have been sentenced under specified sentencing statutes to register as a “career offender,” which the act defines as a person who is designated as a habitual violent felony offender,¹ a violent career criminal,² a three-time violent felony offender,³ or a prison releasee reoffender.⁴ These sentencing statutes have different criteria but, in general, impose enhanced penalties upon offenders who have been convicted on multiple occasions of certain felony offenses.

A career offender released from a sanction⁵ imposed in this state on or after July 1, 2002, is required to register with the sheriff’s office in the county in which the career offender establishes or maintains a permanent or temporary residence within 2 working days of establishing this residence.⁶ The career offender is required to provide identifying information to the sheriff such as the offender’s name, social security number, age, race, date of birth, and address. The sheriff provides the information obtained to Florida Department of Law Enforcement (FDLE). The FDLE maintains a statewide database and a searchable public website with this information.⁷ The career offender is required to update his or her residence information within 2 working days after any change. Failure to comply with the requirements of the section is a third degree felony.⁸

Currently, Florida law punishes acts involving withholding certain information for law enforcement agencies about registration-eligible sexual predators and sexual offenders and harboring and concealing the whereabouts of these sexual predators and sexual offenders. For example, s. 775.21(10)(g), F.S., provides that it is a third degree felony⁹ for any person who has reason to believe that a sexual predator is not complying, or has not complied, with the requirements of this section and who, with the intent to assist the sexual predator in eluding a law enforcement agency that is seeking to find the sexual predator to question the sexual predator about, or to arrest the sexual predator for, his or her noncompliance with the requirements of this section:

- Withholds information from, or does not notify, the law enforcement agency about the sexual predator’s noncompliance with the requirements of this section, and, if known, the whereabouts of the sexual predator;
- Harbors, or attempts to harbor, or assists another person in harboring or attempting to harbor, the sexual predator;

¹ Section 775.084(1)(b), F.S.

² Section 775.084(1)(d), F.S.

³ Section 775.084(1)(c), F.S.

⁴ Section 775.082(9), F.S.

⁵ Section 775.261(3), F.S. provides that a “sanction” includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release or incarceration in a state prison, private correctional facility or local detention facility.

⁶ Section 775.261(3) and (4), F.S. Section 775.261(4), F.S., is the reference for the remainder of the information in this paragraph, unless otherwise indicated.

⁷ See <http://www.fdle.state.fl.us/coflyer/home.asp>

⁸ Section 775.261(8)(a), F.S.

⁹ Sections 775.082 and 775.083, F.S., provide that a third degree felony is punishable by a term of imprisonment not exceeding 5 years, a fine not exceeding \$5,000 or both.

- Conceals or attempts to conceal, or assists another person in concealing or attempting to conceal, the sexual predator; or
- Provides information to the law enforcement agency regarding the sexual predator which the person knows to be false information.¹⁰

There is no similar provision relating to career offenders required to register as such.

III. Effect of Proposed Changes:

The bill amends s. 775.261, F.S., the Florida Career Offender Registration Act, to make it a third degree felony for any person who has reason to believe that a career offender is not complying, or has not complied, with the requirements of s. 775.261, F.S., and who, with the intent to assist the career offender in eluding a law enforcement agency that is seeking to find the career offender to question the career offender about, or to arrest the career offender for, his or her noncompliance with the requirements of the section:

- Withholds information from, or does not notify, the law enforcement agency about the career offender's noncompliance with the requirements of the section, and, if known, the whereabouts of the sexual offender;
- Harbors, or attempts to harbor, or assists another person in concealing or attempting to harbor, the career offender;
- Conceals or attempts to conceal, or assists another person in concealing or attempting to conceal, the career offender; or
- Provides information to the law enforcement agency regarding the career offender that the person knows to be false information.

The bill also reenacts s. 944.608, F.S., for the purpose of incorporating the amendment to s. 775.261, F.S., in a reference to that section.

The effective date of the bill is July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁰ Similar provisions are provided in statutes applicable to sexual offender registration. *See* ss. 943.0435(13), 944.607(12), and 985.4815(12), F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Offenses involving withholding certain information from law enforcement agencies about registration-eligible sexual predators and sexual offenders and harboring and concealing the whereabouts of these sexual predators and sexual offenders are ranked in Level 7 of the offense severity ranking chart of the Criminal Punishment Code. The similar offense created by the bill and applicable to registration-eligible career offenders is not ranked by the bill. Offenses unlisted in the ranking chart are ranked pursuant to s. 921.0023, F.S., which assigns a Level 1 ranking to unlisted third degree felonies.

According to FDLE staff, there are currently 10,879 persons in the career offender registry database.¹¹

The FDLE analysis of the bill states that there will be a nonrecurring impact on the department of \$1,440, the cost of notifying registration-eligible career offenders of the new offense created by the bill.¹² The analysis also states: “There is an undetermined but projected impact to local law enforcement agencies and the local court system for handling and ... [processing] related cases and prosecutions.”¹³

The Criminal Justice Impact Conference, which provides the official estimate of the prison bed impact, if any, of legislation, estimates that the bill will have an insignificant prison bed impact.

VI. Technical Deficiencies:

With two exceptions, the bill tracks language in the Florida Statutes that punishes withholding certain information from law enforcement agencies about registration-eligible sexual predators and sexual offenders and harboring and concealing the whereabouts of these sexual predators and sexual offenders.

The bill punishes a person who “[h]arbors, or attempts to harbor, or assists another person in *concealing* or attempting to harbor, the career offender. The use of the word “concealing” does not track language in similar penalty provisions relating to sexual predators and sexual offenders,

¹¹ E-mail from Mary Coffee, Florida Department of Law Enforcement, to legislative staff, dated April 7, 2009.

¹² Analysis of SB 1094, Florida Department of Law Enforcement, dated March 11, 2009. Expansion of the scheduled mailings for annual address verification of career offenders will include 2,400 additional career offender mailings at \$.60 per mailing (2,400 x \$.60 = \$1,440). *Id.*

¹³ *Id.*

and is problematic for two reasons. First, concealing a career offender is already covered by the separate, prohibited act of concealing or attempting to conceal, or assisting another person in concealing or attempting to conceal, the career offender. Second, the word “concealing” supplants and omits the act of assisting another person harboring a career offender. Staff recommends replacing the word “concealing” on line 39 of the bill with the word “harboring.”

Similar penalty provisions include an exception from the penalty provisions if the sexual predator is incarcerated in or in the custody of a state correctional facility, a private correctional facility, a local jail, or a federal correctional facility. If the bill sponsor’s intent was to track the language in sexual predator and sexual offender registration statutes, the bill should be amended to include a similar exception.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.